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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
Against:

Case No. 2013-899

12 **DAGOBERTO MONTES**

13 **STATEMENT OF ISSUES**

14 Registered Nurse License Applicant

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
19 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
20 Consumer Affairs (Board).

21 2. On or about April 5, 2012, the Board received an application for a Registered Nurse
22 License from Dagoberto Montes (Respondent). On or about April 3, 2012, Dagoberto Montes
23 certified under penalty of perjury to the truthfulness of all statements, answers, and
24 representations in the application. The Board denied the application on June 27, 2012.

25 **JURISDICTION**

26 3. This Statement of Issues is brought before the Board under the authority of the
27 following laws. All section references are to the Business and Professions Code unless otherwise
28 indicated.

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1 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
2 violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice
3 Act] or regulations adopted pursuant to it.

4

5 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
6 functions, and duties of a registered nurse, in which event the record of the conviction shall be
7 conclusive evidence thereof. . . ."

8 8. Section 2762 states:

9 "In addition to other acts constituting unprofessional conduct within the meaning of this
10 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
11 chapter to do any of the following:

12 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
13 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
14 administer to another, any controlled substance as defined in Division 10 (commencing with
15 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
16 defined in Section 4022.

17 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
18 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
19 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
20 himself or herself, any other person, or the public or to the extent that such use impairs his or her
21 ability to conduct with safety to the public the practice authorized by his or her license.

22 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
23 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
24 or the possession of, or falsification of a record pertaining to, the substances described in
25 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
26 thereof. . . ."

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1 **REGULATORY PROVISION**

2 9. California Code of Regulations, title 16, section 1444 states:

3 "A conviction or act shall be considered to be substantially related to the qualifications,
4 functions or duties of a registered nurse if to a substantial degree it evidences the present or
5 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
6 safety, or welfare. . . ."

7 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

8 10. Marijuana (Cannabis) is a hallucinogenic Schedule I controlled substance as defined
9 in Health and Safety Code section 11054(d)(13) and a dangerous drug according to section 4022.

10 **FIRST CAUSE FOR DENIAL OF APPLICATION**

11 **(Convictions of Substantially Related Crimes)**

12 11. Respondent's application is subject to denial under sections 480, subdivision (a)(1),
13 and 2761, subdivision (f), in conjunction with California Code of Regulations, title 16, section
14 1444, in that Respondent was convicted of crimes, substantially related to the qualifications,
15 functions or duties of a registered nurse. Respondent in his application for licensure with the
16 Board admitted to sustaining the following convictions:

17 a. On or about October 18, 2011, after pleading nolo contendere, Respondent was
18 convicted of one misdemeanor count of violating Vehicle Code section 23152(b) [driving with a
19 blood alcohol concentration (BAC) that is equal to or greater than 0.08%, to wit, 0.21%] in the
20 criminal proceeding entitled *The People of the State of California v. Dagoberto Montes* (Super.
21 Ct. Los Angeles County, 2011, No. 1VY04774). The Court placed Respondent on 36 months
22 probation, ordered him to complete five (5) days community labor, and ordered him to complete a
23 Nine-Month First Offender Alcohol Program and attend two (2) Alcoholic Anonymous meetings
24 up until enrollment into the alcohol program.

25 b. The circumstances underlying the conviction are that on or about September 11,
26 2011, Respondent was arrested for driving a vehicle with a BAC 0.21%.

27 c. On or about September 6, 2002, after pleading nolo contendere, Respondent was
28 convicted of one misdemeanor count of violating Health and Safety Code section 11357(b)

1 [possess less than 1 ounce of marijuana] in the criminal proceeding entitled *The People of the*
2 *State of California v. Dagoberto Montes* (Super. Ct. Los Angeles County, 2002, No. 2PN03634).

3 d. The circumstances underlying the conviction are such that on or about June 23, 2002,
4 Respondent was arrested for possession of less than 1 ounce of marijuana.

5 e. On or about March 4, 2002, after pleading nolo contendere, Respondent was
6 convicted of one misdemeanor count of violating Health and Safety Code section 11357(a)
7 [possess less than 1 ounce of marijuana] in the criminal proceeding entitled *The People of the*
8 *State of California v. Dagoberto Montes* (Super. Ct. Los Angeles County, 2001, No. G010276).

9 f. The circumstances underlying the conviction are such that on or about December 9,
10 2001, Respondent was arrested for possession of less than 1 ounce of marijuana.

11 g. On or about July 30, 1998, after pleading nolo contendere, Respondent was convicted
12 of one interlineated misdemeanor count of violating Vehicle Code section 23109(c) [exhibition of
13 speed] in the criminal proceeding entitled *The People of the State of California v. Dagoberto*
14 *Montes* (Super. Ct. Los Angeles County, 1998, No. 8VN02784). The Court sentenced
15 Respondent to eight (8) days jail, and placed him on 24 months probation.

16 h. The circumstances underlying the conviction are that on or about June 21, 1998,
17 Respondent admitted to driving while having a tested 0.083/0.084% BAC.

18 i. On or about March 25, 1996, after pleading nolo contendere, Respondent was
19 convicted of one misdemeanor count of violating Penal Code section 484(a) [theft with prior jail]
20 in the criminal proceeding entitled *The People of the State of California v. Dagoberto Montes*
21 (Super. Ct. Los Angeles County, 1996, No. 6PN02361). The Court sentenced Respondent to five
22 (5) days jail, placed him on 12 months probation and ordered him to stay away from Home Base
23 (hardware store).

24 j. The circumstances underlying the conviction are that on or about March 21, 1996,
25 Respondent stole \$35.95 worth of tools from Home Base.

26 k. On or about August 8, 1995, after pleading nolo contendere, Respondent was
27 convicted of one interlineated count of violating Penal Code section 484(a) [theft] in the criminal
28 proceeding entitled *The People of the State of California v. Dagoberto Montes* (Super. Ct. Los

1 Angeles County, 1995, No. 95M00869). The Court sentenced Respondent to 25 days jail, placed
2 him on 24 months probation, and ordered him to stay away from Magic Mountain.

3 l. The circumstances underlying the conviction are that on or about August 5, 1995,
4 while owning a Magic Mountain annual pass, Respondent shoplifted \$131.04 worth of
5 merchandise from various Magic Mountain guest relations stores.

6 m. On or about May 13, 1994, after pleading nolo contendere, Respondent was convicted
7 of one interlineated misdemeanor count of violating Vehicle Code section 12500(a) [unlicensed
8 driver] in the criminal proceeding entitled *The People of the State of California v. Dagoberto*
9 *Montes* (Super. Ct. Los Angeles County, 1994, No. 94M00646) . The Court placed Respondent
10 on 24 months probation.

11 n. The circumstances underlying the conviction are such that on or about March 29,
12 1994, Respondent was arrested for driving without a valid driver's license.

13 o. On or about February 2, 1994, after pleading nolo contendere, Respondent was
14 convicted of one misdemeanor count of violating Penal Code section 594.3(a) [vandalism, place
15 of worship] in the criminal proceeding entitled *The People of the State of California v. Dagoberto*
16 *Montes* (Super. Ct. Los Angeles County, 1994, No. 94M0164) . The Court sentenced Respondent
17 to nine (9) days jail, placed him on three (3) years probation, and ordered him to complete 240
18 hours community service.

19 p. The circumstances underlying the conviction are such that on or about January 13,
20 1994, Respondent was arrested for vandalism of a place of worship.

21 **SECOND CAUSE FOR DENIAL OF APPLICATION**

22 **(Dishonest Acts)**

23 12. Respondent's application is subject to denial under section 480, subdivision (a)(2), in
24 that on or about March 21, 1996, August 5, 1995, March 29, 1994, and January 13, 1994,
25 Respondent committed acts involving dishonesty, fraud, or deceit with the intent to substantially
26 benefit himself or others, or substantially injure another. Complainant refers to and by this
27 reference incorporates the allegations set forth above in paragraph 11, subparagraphs i – p,
28 inclusive, as though set forth fully.

1 **THIRD CAUSE FOR DENIAL OF APPLICATION**

2 **(Conduct Warranting Licensee Discipline)**

3 13. Respondent's application is subject to denial under section 480, subdivision (a)(3), in
4 that Respondent committed acts/violations which if committed by a licensee would be conduct
5 warranting license discipline. The violations are as follows:

6 a. Section 490, 2961, subdivision (f), in conjunction with California Code of
7 Regulations, title 16, section 1444. On or about October 18, 2011, September 6, 2002, March 4,
8 2002, July 30, 1998, March 25, 1996, August 8, 1995, May 13, 1994, and February 2, 1994,
9 Respondent sustained substantially related criminal convictions.

10 b. Section 2761, subdivision (a), and 2762, subdivision (c). On the grounds of
11 unprofessional conduct, on or about September 6, 2002, and March 4, 2002, Respondent was
12 convicted of crimes involving marijuana, a controlled substance and dangerous drug, and on or
13 about July 30, 1998 and October 18, 2011, Respondent was convicted of a crime involving
14 alcoholic beverages.

15 c. Section 2761, subdivision (a), and 2762, subdivision (a). On the grounds of
16 unprofessional conduct, on or about June 23, 2002, and December 9, 2001, Respondent was in
17 possession of marijuana, a controlled substance and dangerous drug, without a valid prescription.

18 d. Section 2761, subdivision (a), and 2762, subdivision (b). On the grounds of
19 unprofessional conduct, on or about September 11, 2011, June 23, 2002, December 9, 2001, and
20 June 21, 1998, Respondent used alcohol or dangerous drugs to an extent or in a manner
21 dangerous or injurious to himself, or others or to the extent that such use impairs his ability to
22 conduct with safety to the public the practice authorized by his license.

23 e. Section 2761, subdivision (a). Respondent committed acts of unprofessional conduct.

24 f. Section 2761, subdivision (d). Respondent committed acts violating the Nursing
25 Practice Act.

26 Complainant refers to and by this reference incorporates the allegations set forth above in
27 paragraphs 11 and 12, inclusive, as though set forth fully.

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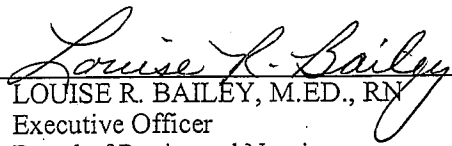
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Denying the application of Dagoberto Montes for a Registered Nurse License; and
2. Taking such other and further action as deemed necessary and proper.

DATED: APRIL 9, 2013


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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